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What Is Gewirth and What is Beyleveld? A Retrospect with Comments on the Contributions Deryck Beyleveld

Introduction

Since I discovered Alan Gewirth's moral philosophy¹ 33 years ago, I have built my academic career around analysing and defending Gewirth's argument for the Principle of Generic Consistency (PGC),² applying my interpretation of it to legal theory and numerous normative issues and questions (particularly ones arising in bioethics and the regulation of the biosciences). I have focussed increasingly on the relationship between Gewirth and Kant, aiming to reconstruct Kant's philosophical anthropology on the premise that the PGC is the Categorical Imperative.³

In this chapter, I will summarise how I have developed Gewirth's foundational argument, offer what I see as the best way to present it, indicate how I intend to further develop Gewirthian theory,⁴ and comment briefly on the other contributions in this volume.

What Have I Done With Gewirth?

Commentators on my Gewirthian work rarely differentiate between Gewirth's views and my own. A number of things have contributed to this.

- 1 I portrayed *The Dialectical Necessity of Morality (DNM)*⁵ as 'an analysis and defence' of Gewirth's argument for the PGC.
- 2 Gewirth fully endorsed my construction.⁶
- 3 I have routinely referred to my constructions as being what Gewirth holds even when this is true in substance but not in form.

How, then, do my views relate to Gewirth's own?

DNM

My immediate reaction to *Reason and Morality* was that it mainly needed a better presentation of the logical structure of the argument to reveal clearly the sequence of its inferences. Insofar as it is accurate to say that *DNM* rationally reconstructs Gewirth's

¹ Specifically A Gewirth, *Reason and Morality* (University of Chicago Press 1978).

² The PGC requires all agents to act in accord with the generic rights (GRs) of all agents, which are rights to generic conditions of agency (GCAs), which are conditions the absence of which has at least come negative effect on the ability of an agent to act or act successfully regardless of the purposes being pursued.

³ See D Beyleveld, 'Gewirth and Kant on Kant's Maxim of Reason: Towards a Gewirthian Philosophical Anthropology' forthcoming in P. Bauhn (ed), *Gewirthian Perspectives on Human Rights* (London, Routledge, 2016).

⁴ 'Gewirthian theory', refers to my interpretation, development, and application of Gewirth's argument for the PGC.

⁵ D Beyleveld, *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency* (Chicago, University of Chicago Press, 1991),

⁶ See Gewirth, 'Foreword' in *DNM*.

argument, which is Gewirth own view,⁷ this reconstruction is mainly elucidatory not revisionary.

I presented the argument in three stages, which Gewirth does not do explicitly, the conclusions of which are:

- I It is dialectically necessary for an agent (call her 'Agnes') to accept that she ought to defend her GCAs from interference against her will.
- II It is dialectically necessary for Agnes to consider that she has both positive and negative rights to the GCAs under the will conception thereof (meaning that, absent any dialectically necessary commitments Agnes has to the contrary, she has the authority to release others from duties she must think they have to protect her GCAs).
- III It is dialectically necessary for Agnes (thus for all agents) to grant equal rights to the GCAs (GRs) to all agents, from which it follows that Agnes may not exercise the GRs if (and only if) doing so compromises the possession of more important GCAs of others.⁸

As Michael Boylan says,⁹ I presented the argument in a direct way (in which Agnes reasons from her claim to choose purposes voluntarily) and in an indirect way (as a *reductio ad absurdum* of the idea that Agnes may (can coherently) accept any maxim about permissible/impermissible action inconsistent with the PGC).¹⁰ However, I also maintained that the argument can be presented in two stages, because the collective universalisation reasoning that is applied to II to yield III can be applied to I to yield III without first establishing II.¹¹

Apart from this, I presented additional arguments for some of Gewirth's inferences, such as my 'Argument from Attitudinal Consistency for II',¹² on which there has been no comment (which I see as elaborating and refining Gewirth's own reasoning, according to which Agnes must consider that she has rights to the GCAs because she must be opposed to interference with her GCAs,¹³ which some commentators¹⁴ wrongly allege conflates 'must' in a non-normative sense with 'ought'). I also employed the device of putting dialectically necessary claims in face brackets, subscripted with a letter or letters to indicate for whom acceptance of the bracketed claim is dialectically necessary. So, for example, {MyR}_I means 'It is dialectically necessary for me to accept that I have the GRs', and {PPAOR}_I means 'It is dialectically necessary for me to accept that any other prospective purposive agent (or just, agent) has the GRs'.

⁷ See Gewirth, 'Foreword' in *DNM* vii.

⁸ Measured by Gewirth's criterion of 'necessity' (or 'needfulness') for action (see *Reason and Morality* 62–3; 343–49).

⁹ M Boylan, 'Introduction' in M Boylan (ed), *Gewirth: Critical Essays on Action, Rationality, and Community* (New York, Rowman and Littlefield, 1999) 1, 2.

¹⁰ *DNM* chapter Three.

¹¹ For example, *DNM* 60; 263–64.

¹² *DNM* 95–101.

¹³ Gewirth, *Reason and Morality* 79–80.

¹⁴ Such as K Nielsen, 'Against Ethical Rationalism' in E Regis Jr (ed), *Gewirth's Ethical Rationalism* (Chicago, University of Chicago Press, 1984) 72.

And I devoted an entire chapter to the argument for positive rights¹⁵ because *Reason and Morality* places this argument in a section dealing with application of the PGC, not its justification, which courts the misunderstanding that Gewirth tries to derive positive rights from negative rights,¹⁶ and because some of Gewirth's 'defenders' do not believe that the argument justifies positive rights.¹⁷

I also replied to critics not addressed by Gewirth, and dealt with all critics from the perspective of my 'reconstruction'.

Shortcomings

DNM has weaknesses. The following are a few examples.

As Ken Westphal says in this volume, Gewirth claims that the argument proceeds in terms of deductive and inductive logic.¹⁸ But more than this is involved, because dialectically necessary 'oughts' are not logical 'oughts' or conceptually necessary (analytic) ones, but prescriptions *the acceptance of which* is a strict requirement of agential self-understanding, prescriptions that must be accepted on pain of misunderstanding what it is to be an agent, so must be accepted if one is not to imply that one is not an agent¹⁹ (which, I maintain, is what Kant means by 'synthetic a priori').²⁰ I expended a lot of effort on this in *DNM*,²¹ but still used the terms 'logically required' in places where it might have been better not to do so.

The most persistent and pernicious misunderstanding of the argument derives from the fact that Gewirth uses the term 'prudential' in two senses. In the first, calling a claim 'prudential' signifies that it is justified relative to Agnes' need for the GCAs. In the second, calling a claim 'prudential' signifies that it has not yet been shown that Agnes must treat another agent's, say Brian's, dialectically necessary commitments as though they were her own. I could have explained better how the prudential and dialectically necessary aspects of the argument relate to each other.

I also paid insufficient attention to Gewirth's contention that the argument rests on ascribing some sense of free-will to agents²² (though this neglect does not affect the validity of the argument); but the issue is more complex than I suggested because it is not so much whether agents must consider that they have free-will, as against in just what sense they must eschew belief in universal determinism.²³

¹⁵ *DNM* chapter 10.

¹⁶ See, eg, J Narveson, 'Negative and Positive Rights in Gewirth's *Reason and Morality*' in E Regis Jr (ed), *Gewirth's Ethical Rationalism* (Chicago, University of Chicago Press, 1984).

¹⁷ Like R Pilon, 'Ordering Rights Consistently: Or What We Do and Do Not Have Rights To' (1979) 13 *Georgia Law Review* 1171.

¹⁸ Gewirth, *Reason and Morality* 22

¹⁹ Nevertheless, I think Westphal exaggerates the differences in substance between Gewirth and me on this point, and I do not think that he is right to say that Gewirth operates from the standpoint of rational egoism.

²⁰ See D Beyleveld, 'Gewirth and Kant on Justifying the Supreme Principle of Morality' in M Boylan (ed), *Gewirth: Critical Essays on Action, Rationality, and Community* (Lanham, Rowman and Littlefield, 1999) 97; 'Korsgaard v Gewirth on Universalization: Why Gewirthians are Kantians and Kantians Ought to be Gewirthians' (2015) 12 *Journal of Moral Philosophy* 573; and 'Gewirth and Kant on Kant's Maxim of Reason' (n 3).

²¹ See chapter Five especially.

²² See Gewirth, *Reason and Morality* 36–37.

²³ See Beyleveld, 'Gewirth and Kant on Kant's Maxim of Reason' (n 3).

Furthermore, I too easily accepted²⁴ what Gewirth has to say about ‘marginal’ agents, specifically his claim that non-agents have the GRs in proportion to how closely they approach being agents, which is a mistake.

A shortcoming, identified by Jesse Kalin, when reviewing the manuscript of *DNM* for to the University of Chicago Press,²⁵ is that *DNM* does not explain the relationship between Gewirth and Kant. This is, in part, because my knowledge of Kant was not great at the time. It is also because Gewirth read Kant entirely through the lens of chapters One and Two of *Groundwork of the Metaphysics of Morals*²⁶ without any attention to chapter Three, with the result that he viewed Kant as a preference utilitarian like RM Hare.²⁷ However, to go into this would have necessitated a much longer book. I regard this as the most serious shortcoming of *DNM*.

Post-*DNM*

After *DNM*, I formulated (with Shaun Pattinson) a precautionary argument for granting the GRs to apparent agents and for agents to accept some duties to apparent non-agents (Gewirth’s ‘marginal agents’) to correct Gewirth’s invalid reasoning on this issue.²⁸

I also clarified further the relationship between ‘prudential’ and dialectically necessary aspects of the argument.²⁹

But most of my attention has been on the relationship to Kant.³⁰ Put simply, I consider that Gewirth and Kant both use the Gewirthian dialectically necessary method in arguing for morality. Most of the important differences between them stem from the Gewirthian claim that it is dialectically necessary for Agnes to accept the Principle of Hypothetical Imperatives (PHI),³¹ which claim does not figure in Kant’s argument for morality. It is for this reason that the PGC grants rights to agents under the will conception, so that Agnes can have no perfect duties to herself *under* the PGC, only a perfect duty to herself to obey the PGC (though

²⁴ *DNM* 447.

²⁵ He requested to be identified.

²⁶ I Kant, *Groundwork of the Metaphysics of Morals* edited by M Gregor (Cambridge, Cambridge University Press, 1997).

²⁷ RM Hare, *Moral Thinking* (Oxford University Press, 1984).

²⁸ See D Beyleveld and SD Pattinson, ‘Precautionary Reasoning as a Link to Moral Action’ in M Boylan (ed), *Medical Ethics* (Upper Saddle River New Jersey, Prentice Hall, 2000) 39; and ‘Defending Moral Precaution as a Solution to the Problem of Other Minds: A Reply to Holm and Coggon’ (2010) 23 *Ratio Juris* 258; and D Beyleveld and R Brownsword, *Human Dignity in Bioethics and Biolaw* (Oxford, Oxford University Press, 2001) 117–34.

²⁹ See D Beyleveld and G Bos, ‘The Foundational Role of the Principle of Instrumental Reason in Gewirth’s Argument for the Principle of Generic Consistency: A Response to Andrew Chitty’ (2009) 20 *King’s Law Journal* 1; D Beyleveld, ‘Williams’ False Dilemma: How to Give Categorically Binding Impartial Reasons to Real Agents’ (2013) 10 *Journal of Moral Philosophy* 204; and ‘Korsgaard v Gewirth’ (n 20).

³⁰ See Beyleveld, ‘Gewirth and Kant on Justifying the Supreme Principle of Morality’ (n 20); *Morality and the God of Reason* (Utrecht, Utrecht University, 2009); ‘Williams’ False Dilemma’ (n 29); ‘Korsgaard v Gewirth’; and ‘Gewirth and ‘Kant on Kant’s Maxim of Reason’ (n 3); and Beyleveld and Brownsword, *Human Dignity in Bioethics and Biolaw* chapter Five (n 28). D Beyleveld, ‘Hope and Belief’ in RJ Jenkins and E Sullivan (eds), *Philosophy of Mind* (New York, Nova Science Publishers Inc, 2012) 1, and D Beyleveld and P Ziche, ‘Towards a Kantian Phenomenology of Hope’ (2015) 18 *Ethical Theory and Moral Practice* 927 are also relevant.

³¹ The PHI states that if Agnes wishes to pursue E, and having X (or doing Y) is necessary for her to achieve E, then she ought to pursue/defend having X (or doing Y), or give up pursuing E.

Gewirth courted the idea of perfect duties to oneself under the PGC),³² whereas perfect duties to oneself under the moral law are central to Kant's view. Agnes' dialectically necessary commitment to the PHI also requires her to recognise positive as well as negative GRs, whereas Kant recognises only negative perfect duties to others. Most radically, I now contend that dialectical necessity commitment to the PHI entails a philosophical anthropology³³ in which agents are essentially hoping-fearing beings (who ought to suspend belief in free-will in any positive metaphysical sense as well as in determinism), in contrast to Kant's view, which is built on linkage of the moral law to a presupposition of metaphysical free-will as against determinism.

I have also presented dialectically contingent arguments for the PGC,³⁴ which Gewirth avoided doing because they cannot establish the PGC as categorically binding, being directed mainly at those who accept (for whatever reason) that agents ought to be treated impartially.

Recently, I have presented a new argument for II³⁵ (for {ARO^A}_{Agnes} entails {AGR}_{Agnes}),³⁶ which is as follows: *If* Agnes were to adopt the impartiality assumption, according to which she must treat {BRO^B}_{Brian} as ruling her action in the same way that she is required to treat {ARO^A}_{Agnes}, she would have to accept that it is dialectically necessary for her to defend Brian's GCAs from interference against *his* will, which means {BGR}_{Agnes}. However, this cannot be the effect of Agnes adopting the impartiality assumption unless {ARO^A}_{Agnes} \equiv {AGR}_{Agnes}.

Because Article 1 of the Universal Declaration on Human Rights 1948 states that all human beings (hence all human agents) are equal in dignity and rights, and a right cannot be granted sincerely without granting a right to the necessary means to exercise it, it follows that the PGC must be considered to be the governing normative principle of the international system of human rights on pain of denying either that acceptance of the PHI is dialectically necessary and there are GCAs *or* that all human *agents* are equal in dignity and rights.

Applications

Apart from cases already mentioned, I have applied the PGC widely: for example, to the concept of law;³⁷ numerous issues in bioethics and biolaw;³⁸ genetic screening for

³² See Gewirth, *Reason and Morality*, 334–37, criticised in Beyleveld and Brownsword, *Human Dignity in Bioethics and Biolaw* 106–08 (n 28).

³³ Beyleveld, 'Morality and the God of Reason' (n 30); and 'Gewirth and Kant on Kant's Maxim of Reason' (n 3).

³⁴ D Beyleveld, 'Legal Theory and Dialectically Contingent Justifications for the Principle of Generic Consistency' (1996) 9 *Ratio Juris* 15; Beyleveld and Brownsword, *Human Dignity in Bioethics and Biolaw* 77–86 (n 28); D Beyleveld and R Brownsword, *Consent in the Law* (Oxford, Hart Publishing, 2007) 44–51; and most recently D Beyleveld, 'The Principle of Generic Consistency as the Supreme Principle of Human Rights' (2011) 13 *Human Rights Review* 1.

³⁵ See Beyleveld, 'The Principle of Generic Consistency as the Supreme Principle of Human Rights'.

³⁶ 'ARO' = 'Agnes ought to defend her possession of the GCAs'. 'ARO^A' = 'Agnes ought to defend her possession of the GCAs from interference against her will'. 'AGR' = 'Agnes has the GR'.

³⁷ In, eg, D Beyleveld and R Brownsword, *Law as a Moral Judgment* (London, Sweet and Maxwell, 1986; reprinted Sheffield, Sheffield Academic Press, 1994).

³⁸ Most comprehensively in Beyleveld and Brownsword, *Human Dignity in Bioethics and Biolaw* (n 28), chapter Eight of which presents a theory of property rights that modifies Gewirth's position in *The Community of Rights* (Chicago, University of Chicago Press, 1996).

Huntington's Disease;³⁹ equity in allocating advances in biotechnology;⁴⁰ the right to privacy;⁴¹ the right to a minimum wage;⁴² morality exclusions in patent law;⁴³ rights of future generations;⁴⁴ the role of consent in law;⁴⁵ and precautionary reasoning in law.⁴⁶

The Argument in Essence

The PGC is dialectically necessary *iff*

- (1) {PHI}_{Agnes}.
- (2) There are GCAs.⁴⁷
- (3) Dialectically necessary commitments are necessarily collectively universal, not merely distributively universal.

(1) coupled with (2) yields {ARO^A}_{Agnes}, and coupling {ARO^A}_{Agnes} (\equiv {AGR}_{Agnes}) with (3), which yields {BRO^B}_{Brian} (\equiv {BGR}_{Brian}) by distributive universalisation, yields {BGR}_{Agnes} by collective universalisation.⁴⁸ And this means that {PGC}_{Agnes}.

³⁹ D Beyleveld, O Quarrell, and S Toddington, 'Generic Consistency in the Reproductive Enterprise: Ethical and Legal Implications of Exclusion Testing for Huntington's Disease' (1998) 3 *Medical Law International* 135.

⁴⁰ D Beyleveld and SD Pattinson, 'Individual Rights, Social Justice, and the Allocation of Advances in Biotechnology' in M Boylan (ed), *Public Health Policy and Ethics* (Dordrecht, Kluwer, 2004) 59.

⁴¹ D Beyleveld, 'Conceptualising Privacy in Relation to Research Values' in SAM McLean (ed), *First Do No Harm* (London, Ashgate, 2006) 151; D Beyleveld, 'Data Protection and Genetics: Medical Research and the Public Good' (2007) 18 *King's Law Journal* 275; and D Beyleveld and SD Pattinson, 'Moral Interests, Privacy and Medical Research' in M Boylan (ed), *International Public Health Policy and Ethics* (Springer, 2008) 45.

⁴² D Beyleveld and C Villiers, 'A General Right to a Minimum Wage in English Law: An Argument from Generic Consistency' (1997) 17 *Legal Studies* 234.

⁴³ For example, D Beyleveld, 'Regulating Morality through Patent Law. Critique of the EC Directive' (2000) 12 *Law and the Human Genome Review* 141.

⁴⁴ D Beyleveld, M Düwell and A Spahn, 'Why and How Should We Represent Future Generations in Policy Making?' (2015) 6 *Jurisprudence* 549; and D Beyleveld, 'Duties to Future Generations: A Gewirthian Approach' forthcoming in G Bos and M Düwell (eds), *Human Rights and Sustainability: Moral Responsibilities for the Future* (London, Routledge, 2016).

⁴⁵ Beyleveld and Brownsword, *Consent in the Law* (n 34).

⁴⁶ D Beyleveld and R Brownsword, 'Complex Technology, Complex Calculations: Uses and Abuses of Precautionary Reasoning in Law' in P Sollie and M Düwell (eds), *Evaluating New Technologies: Methodological Problems for the Ethical Assessment of Technological Developments* (Berlin, Springer, 2009) 175–90; and 'Emerging Technologies, Extreme Uncertainty, and the Principle of Rational Precautionary Reasoning' (2012) 4 *Law, Innovation and Technology* 35.

⁴⁷ Gewirth divides the GCAs into those needed to act at all (basic GCAs) and those needed for successful action (divided into nonsubtractive and additive GCAs). He also classifies GCAs at all three levels as either substantive (needed for well-being) or procedural (needed for freedom of action). He gives a few examples, such as life, mental equilibrium, and the necessary means to these (basic), accurate information (nonsubtractive) and further education (additive) (see *Reason and Morality* 54–7). It is important in the argument for the PGC not to try to specify what constitutes the GCAs beyond this level of abstraction. This is because what will, in practice, constitute the necessary means to the GCAs abstractly specified can and will vary according to contingent factors, such as the biological constitution of an agent, and resources available to an agent. For example, air of a certain composition is a necessary means to the life of human agents, but it need not be for agents with a different biological makeup (if such exist). Also, some things, like peanuts, which can threaten the life of an agent allergic to them can be, and are, healthy foods for other agents. So, this kind of specification must be left to the applications of the PGC. The fact that what instantiates a GCA, or interference with its possession, can vary does not affect the universality of the PGC because the PGC grants the GRs, not to the instantiations *in themselves* of the GCAs, but to the instantiations *as instantiations of the GCAs*.

But this makes the PGC categorically binding on Agnes only if

- (4) Being dialectically necessary for Agnes to accept a principle renders the principle categorically binding on her.

And, even if (4) is true, Agnes is only categorically bound to comply with the PGC *in her practical dealings* if

- (5) Agnes is categorically bound to treat those who behave as though they are agents as agents.

(3) is true if

- (6) It is dialectically necessary for Agnes to hold that she ought to have X or do Y and that Brian ought to support her to have X or do Y, entails that it is dialectically necessary for Agnes to hold “‘Agnes is an agent’ entails ‘Agnes ought to have X or do Y and that Brian ought to support her to have X or do Y’”⁴⁹

where ‘being an agent’ means ‘belonging to the class of beings who have the capacity to pursue their chosen purposes voluntarily’.

Although Agnes cannot know for certain that anyone other than herself is an agent, only that some other beings behave as though they are agents, this does not imply that Agnes is not categorically bound to treat anyone other than herself as an agent. (5) is true because if Agnes mistakenly treats an apparent agent (whom she can treat as an agent) as a non-agent she violates the PGC (because she is categorically bound to grant the GRs to all agents), whereas if she mistakenly treats an apparent agent as an agent she does not violate the PGC. This reasoning does not require her to grant apparent non-agents the GRs (even though she cannot know that they are not agents) because it is only possible for her to treat apparent agents as agents. It does, however, require Agnes to accept duties to apparent non-agents insofar as she can identify interests that they have that she would have to treat as GCAs of agents if they were apparent agents.

If the PGC is categorically binding on Agnes, then she cannot coherently assent to any rule or principle inconsistent with the PGC. Therefore, rules issued by sources that legal positivists consider to be the sources of legal obligations cannot have any normative validity, cannot constitute rationally justified obligations (prescriptions of required action that any agent may coherently consider ought to be applied and obeyed) if they are inconsistent with the PGC. Being prescribed by these sources, or assented to by those who accept these sources, cannot make them normatively binding. If moral obligations are conceived as

⁴⁸ Agnes’ commitment to BGR holds unless defending Brian’s possession of the GCAs in accordance with his will threatens disproportionate damage to her (or a third agent’s, Carol’s) GCAs against her (or Carol’s) will.

⁴⁹ Gewirth argues for this by his Argument from the Sufficiency of Agency (ASA) (see *Reason and Morality* 110), according to which {AGR}_{Agnes} entails {‘Agnes is an agent’ entails ‘AGR’}_{Agnes}. He reasons that if Agnes denies “‘Agnes is an agent’ entails ‘AGR’” she must hold “‘AGR’ entails ‘Agnes has a property D that she does not necessarily have as an agent’”. But then she must accept that if she does/did not have D then she does/would not have the GRs, which is contrary to {AGR}_{Agnes}. Therefore, it is dialectically necessary for her to hold “‘Agnes is an agent’ entails ‘AGR’”.

categorically binding impartial ones, the PGC is a moral principle, which entails that no rules can be valid (rationally binding) if they are inconsistent with one's moral obligations as laid down by the PGC. This is the basis for the natural law view propounded in *Law as a Moral Judgment*.⁵⁰

Even if (3) is false, but (1) and (2) are true, then

- (7) Anyone who holds that all agents are to be treated with equal concern and respect must accept that it is dialectically necessary for them (as agents *who hold* that all agents must be treated with equal concern and respect) to accept the PGC.

From this it follows, as already mentioned, that the PGC is the supreme principle of human rights (hence of any legal system that accepts that there are human rights) and morality generally (so no one who holds that there are genuine moral principles can coherently assent to rules having any normative validity that are contrary to the PGC).

Critical Reaction and Misunderstandings

Objections to the Gewirthian Foundational Thesis

Most critics accept that it is categorically instrumentally irrational for Agnes not to accept ARO because she needs her GCAs to act/act successfully whatever her purposes.

Whether or not they accept that ARO requires Agnes to hold that Brian ought not to interfere with her possession of the GCAs and that this means that Agnes must hold AGR, they object that because the justification given for AGR is Agnes' need for the GCAs, it only follows that Agnes categorically must accept BGR on the false premise that she *necessarily* needs Brian to have the GCAs. For Agnes to be required to accept BGR, she must have reason to defend Brian's agency that is not given merely by *her need* for the GCAs.

This line of objection⁵¹ is *sound on its major premise*, which is that Gewirthians try to derive BGR_{Agnes} from ARO_{Agnes} .

But Gewirthians do not try to derive BGR_{Agnes} from ARO_{Agnes} (or from ARO^A_{Agnes}). They derive $\{BGR\}_{Agnes}$ from $\{ARO^A\}_{Agnes}$. The dialectically necessary method only operates on propositions that are dialectically necessary for Agnes to accept. It is not dialectically necessary for Agnes to accept ARO, because her required acceptance of ARO is conditional on her being unwilling to accept generic damage to her ability to act, and Gewirthians do not assume that agents necessarily want to continue to be agents/successful agents. It is, however, dialectically necessary for Agnes to accept $ARO^A = \text{'Agnes ought to accept ARO if she wishes to be an agent/successful agent'}$. The rest of the argument elicits the purely logical and conceptual entailments of $\{ARO^A\}_{Agnes}$, not the logical and conceptual entailments of ARO_{Agnes} .

In other words, the Gewirthian argument is not a form of rational egoism that operates on a Humean internalism trying to justify a categorically binding impartial principle on the basis of prudential (i.e., generically instrumental) considerations. That Agnes generically

⁵⁰ n 37.

⁵¹ Which is presented influentially by B Williams, *Ethics and the Limits of Philosophy* (London, Fontana, 1984) chapter Four.

needs the GCAs determines the interests she may and must claim rights to, while the PHI determines the kind of rights she must claim (namely, rights under the will conception). But that she must claim rights to the GCAs at all (which she must grant equally to Brian) is because it is dialectically necessary for her to accept the PHI.

Thus, in being an argument from agential self-understanding, the argument does not presuppose that agents have value, either individually or collectively, the PGC is not derived from the presumption or imputation of any normative standpoint, from any contingent choices made by agents, and also not just from understanding what constitutes *being* an agent, but from understanding what constitutes *understanding what it is to be* an agent.

Regarding II, there are essentially three arguments for $\{ARO^A\}_{Agnes}$ entailing $\{AGR\}_{Agnes}$. The first is that (by the concept of a GCA) Agnes needs the GCAs in order to act in accordance with ARO^A , and will not have them if Brian interferes with her possession. Therefore, to be consistent with $\{ARO^A\}_{Agnes}$ she must hold $\{AGR\}_{Agnes}$. The second is that $\{AGR\}_{Agnes}$ requires Agnes to be opposed to interference with her GCAs against her will, which attitude is not required by her acceptance of any other propositions about interference with her GCAs (the essence of my Argument from Attitudinal Consistency). The third argument (already mentioned above) is that, given $\{ARO^A\}_{Agnes}$, if Agnes were to hold that all agents should be treated impartially, she would have to accept $\{BGR\}_{Agnes}$, which cannot be case unless $\{ARO^A\}_{Agnes} \equiv \{AGR\}_{Agnes}$.

The argument for III is that (by the ASA)⁵² $\{AGR\}_{Agnes}$ entails ‘Agnes is an agent’ entails ‘AGR’_{Agnes}, and logically universalising “‘Agnes is an agent’ entails ‘AGR’” entails “‘Brian is an agent’ entails ‘BGR’”, from which it follows that ‘Brian is an agent’ entails ‘BGR’_{Agnes}.

Most commentators overlook the ASA, despite the fact that chapter Eight of *DNM* is devoted to it (and I highlighted it as the most important aspect of the collective universalisation procedure),⁵³ probably because they continue to be deluded that the justification Agnes has for AGR_{Agnes} is the fact that, in being an agent, she generically instrumentally needs the GCAs, rather than the dialectical necessity for her to hold AGR_{Agnes} .

However, two objections to the ASA must be taken into account.

The first⁵⁴ alleges that ‘Agnes is an agent’ is referentially opaque between Agnes being a member of the class of agents (those who necessarily proactively value their own chosen purposes) (Agnes as a type of agent, a Ta) and Agnes being the particular unique member of this class who necessarily proactively values Agnes’ chosen purposes (Agnes as a token of an agent, a ta). The allegation is that Agnes necessarily reasons from her position as the ta she is, on the basis of which she is only required to accept that she ought to defend Brian’s GCAs unless he is willing to suffer generic damage to his ability to act if he necessarily proactively values her purposes, which is not the case. In short, claiming that universalisation of “‘Agnes is an agent’ entails $ARO^A (\equiv AGR)$ ” entails “‘Brian is an agent’ entails ‘BRO^B ($\equiv BGR$)’” equivocates between Agnes as a Ta and Agnes as a ta.

⁵² See n 6.

⁵³ *DNM* 392–93.

⁵⁴ I attributed this to J Scheuermann, ‘Gewirth’s Concept of Prudential Rights’ (1987) 37 *Philosophical Quarterly* 291 (see *DNM* 288–300).

The second objection⁵⁵ claims that because $AGR \equiv ARO^A$, even if the ASA shows that {‘Agnes is a Ta’ entails ‘ ARO^A/AGR ’}_{Agnes}, the universalised conclusion is not {‘Brian is a Ta’ entails ‘ BRO^B/BGR ’}_{Agnes} but {‘Brian is a Ta’ entails ‘Brian ought to defend his GCAs and have them defended only as required by *Agnes*’ willingness to act’} = { BRO^BA/BGR^A }_{Agnes}.

My response to the first objection is that Agnes cannot be the ta that she is (defined in part by the choices she makes and the normative standpoints she adopts), without being a Ta, without having the *capacities for* sensing, conceptualising, imagining, desiring, feeling, valuing, believing, reasoning, understanding, and possessing needs (physical, psychological, social) as well as cognitive vulnerabilities that are presupposed by the very idea that Agnes may or ought to do anything. For Agnes to fail to understand what these are and how they relate, is for her to fail to understand what it is for her to be the ta that she is, which is to imply that Agnes does not have the particular sense-experiences, concepts, images, desires, feelings (emotions), values, beliefs, reasonings, understandings, and needs that constitute being Agnes rather than Brian. In fact there is a biconditional relationship between Agnes being a Ta and Agnes being a ta, because the Principle of Reflective Judgment (PRJ) applies (according to which *Agnes* cannot understand that she is a ta without understanding that she is a Ta, and can only understand that she is a Ta from her position as the ta that she is). So even though it is true that Agnes reasons from her position as a ta, she cannot avoid regarding being a Ta as the *ratio essendi* for ARO^A/AGR .

My response to the second objection⁵⁶ is that it is in being grounded in Agnes’ understanding that she is a Ta that Agnes must think of herself as the supreme authority over the disposal of her GCAs (that she must hold ARO^A/AGR). So, it cannot follow, as Chitty claims, that Agnes must consider her will to be the supreme authority over the disposal of Brian’s GCAs (BRO^BA), because this can only follow if Agnes’ reason for ARO^A/AGR is that this is for the sake of Agnes’ generic needs (herself as a ta) rather than being justified by Agnes’ understanding that she is a Ta. So, if Agnes recognises that Brian is a Ta (which she must do if it is intelligible for her to claim the GRs against Brian), Agnes must grant that Brian is the supreme authority over the disposal of his GCAs.

But there is yet another strategy for attacking the Gewirthian foundational thesis.⁵⁷ It is that establishing that it is dialectically necessary for Agnes to accept a principle (assuming that this can be done) does not show that it is categorically binding, because, unless there is a reason independent of dialectical necessity that requires Agnes to value being an agent, the fact that acceptance of the principle is constitutive of *being an agent* does not show that Agnes ought to act according to the principle.

This objection, however, rests on misconstruing the thesis that it is dialectically necessary for Agnes to accept a principle (such as ARO^A) as the claim that ARO^A falls out of understanding *what constitutes being an agent*, implying that Agnes is *not an agent* unless she accepts ARO^A . But this is not the Gewirthian thesis, which is that required acceptance of ARO^A is produced by what constitutes *understanding what it is to be an agent*. This proposition does not entail that Agnes is not an agent if she does not accept ARO^A .

⁵⁵ This is how I understand A Chitty, ‘Protagonist and Subject in Gewirth’s Argument for Human Rights’ (2008) 19 *King’s Law Journal* 1.

⁵⁶ See Beyleveld and Bos, ‘The Foundational Role of the Principle of Instrumental Reason’ (n 29).

⁵⁷ See D Enoch, ‘Agency, Shmagency: Why Normativity Won’t Come from What is Constitutive of Action’ (2006) 115 *Philosophical Review* 169.

It might be thought that this merely raises the question why Agnes ought to care whether or not she acts in accord with agential self-understanding. But to ask such a question presupposes Humean internalism and also that Agnes can coherently ascribe action-motivating attitudes to herself while implying that she is not an agent. Since the latter presupposition is incoherent, the implication is that a categorical ought is sufficiently justified, or even that it is constituted, by being dialectically necessary for Agnes to accept.

This leaves only the objection that Agnes cannot know that Brian is an agent, so cannot be categorically bound to treat Brian as an agent, on which I have already commented.

Objections to Gewirthian Legal Idealism

These fall into two types: objections based on rejecting the foundational argument; and objections that accuse Gewirthian Legal Idealism of permitting or even requiring various moral failings.

In my opinion, all of the latter rest on conceiving of law as rules promulgated by the powerful, and legal obligations as requirements for action laid down by such rules (corresponding to which they treat moral obligations as requirements of rules that derive their obligatory status from having a different source) and on imposing this way of conceiving things on Gewirthians. In so doing, they attempt to characterise obligations (whether legal or moral) in a purely detached way, as what is validated on the presumption of a basic norm or rule of recognition that, in the case of legal obligations, simply mirrors the fact of acceptance by those whose rules are generally applied and obeyed.

However, while it is not impermissible *linguistically* to characterise obligations in this way, and when this is done it is clearly the case that there can be legal obligations that are not consistent with the requirements of the PGC, it is impermissible to presume that Gewirthians characterise obligations (legal or otherwise) in this way.

According to Gewirthians, claims to obligations are claims that those who have the obligations ought to act in a particular way whether they want to or not. As such, a claim to an obligation is not valid or veridical if it is not true that those to whom it is directed ought to accept that they ought to act in this way whether they want to or not, and the fact that the rule prescribed by someone else requires the addressee to act in accordance with the rule whether the addressee wants to or not, does not render the rule binding on the addressee. To say that something is an obligation from someone's point of view, or relative to some norm or principle, does not bind *anyone* normatively. That Hitler held that the Jews ought to be exterminated does not show that *anyone ought to hold* that the Jews ought to be exterminated. To show that there really is an obligation to do something can, according to the Gewirthian argument for the PGC, only be shown by showing that it is validated (directly or indirectly) by the PGC, as itself a strict requirement of agential self-understanding.

Of course, it might be said that this does not mean that obligations lose their *legally* binding character if they contravene the PGC, merely that they are immoral obligations. But this is to miss the point entirely. If the PGC is, as Gewirthians maintain, categorically binding, then there is no point in characterising statements of obligation as obligations (as against mere claims to obligations) if they are not consistent with the requirements of the PGC. Since even detached descriptions of 'obligation' are descriptions about what someone holds to be normatively valid, if it can be shown that agents categorically ought not to hold what they hold to be normatively valid, then it is categorically

irrational not to give priority to the conceptualisation consonant with what they ought to hold to be normatively valid.

Future Directions

As I have already said, it seems to me to be of primary importance to elucidate how the validity of the Gewirthian argument for the PGC impacts on Kant's philosophy as a whole.

Since, I consider that Kant's *theoretical* philosophy⁵⁸ is essentially sound, this leaves at least three important remaining tasks for Gewirthians: (i) to formulate a Gewirthian theory of punishment (upon which Roger Brownsword and I intend to write a monograph);⁵⁹ (ii) to develop a Gewirthian theory of Aesthetics (which Dascha Doring and Marcus Düwell have already embarked upon in this volume); and (iii) to integrate all of this into a Gewirthian philosophical anthropology.⁶⁰

However, regarding (iii), not only does this require an integrating analysis of Gewirth's monograph on self-fulfilment,⁶¹ it now seems to me that it requires detailed attention to the relationship between Gewirthian theory and the theories of post-Kantian idealists like Fichte, Schelling, and Hegel (about which Stuart Toddington and Ken Westphal have things to say in this volume).

Comments on Contributions

My comments do not follow the order of contributions. Very roughly, the contributions can be divided into two categories: those that apply the PGC to a number of issues or cases that are significant for interpreting positive law or for legal theory generally; and those that reflect, either in application or critique, on central aspects of Gewirthian moral epistemology.

Reflections on Law

Shaun Pattinson presents what seems to me to be an exemplary analysis of the validity and applicability of advance directives that is completely consistent with the PGC. I have nothing of substance to add to his analysis.

Roger Brownsword is worried that technological advances make possible crime prevention and other behavioural control strategies that are problematic ethically and in the way in which they can be incorporated into the rules of a legal system. I will not go into the details of his thought-provoking analysis. Instead, I will confine myself to a few schematic remarks.

The problem cannot be, and he does not suggest that it is, that making certain kinds of behaviour impossible or very difficult threatens to destroy the capacity of agents to act. More intriguing is the thought that if behaviour is comprehensively channelled by technologies,

⁵⁸ Per W Waxman, *Kant's Anatomy of the Intelligent Mind* (Oxford, Oxford University Press, 2014).

⁵⁹ See also SP Brown, *The Moral Justification of Retributive Punishment by Reference to the Notion of Balance*. Unpublished PhD Thesis (Sheffield, University of Sheffield, 1998).

The relationship between Kantian and Gewirthian legal theory also needs further elaboration, which is something on which Patrick Capps has commented in this collection.

⁶⁰ On which see Beyleveld, 'Gewirth and Kant on Kant's Maxim of Reason' (n3).

⁶¹ A Gewirth, *Self-Fulfillment* (Princeton NJ, Princeton University Press, 1998).

children might lose the capacity to think reflectively about their behaviour, and might lose the capacity to respond effectively to breakdowns in the system of control. However, it is difficult to predict at what point this might happen. What is most worrying about these technologies is that, almost by definition, they will be in the hands of an elite, and could be used to effect an unprecedented degree of control by such groups. The biggest question is how society and its legal system can and should go about securing democratic control of these technologies in accordance with the requirements of the PGC.

Henrik Palmer Olsen's paper illustrates how what the PGC requires can vary according to the circumstances. I only wish to emphasise that his claim that political factors can require compromising what the PGC ideally requires means only that in the real world it might not (indeed, will not) be possible to grant everyone all of the GRs, and to set up institutions that guarantee that the possession by everyone of the GCAs will not be compromised. It does not and cannot mean that, in the context of international relations (or any other relations) the PGC does not remain the supreme principle of all practical reason. What the PGC requires, and always requires, is that the GRs of all agents must be respected as much as possible in the circumstances that pertain.

Patrick Capps, likewise, provides an analysis of the Gewirthian (and Kantian) approach to issues of global governance that I am happy to endorse in the main. I do, however, think that he underplays the extent to which the PGC permits and often requires procedural solutions in the enterprise of subjecting human conduct to the governance of rules.⁶²

Ben Capps builds upon the 'co-operative model' of conflicts between privacy and medical research interests that I have developed⁶³ to show how appeals to the public good and public interest should be conceptualised to guard against unjustifiable misappropriation of these concepts. What he says is basically sound, though I think he could have made more of the fact (which he recognises) that, under the PGC, GRs and rights granted to serve GRs can only be overridden by conflicting GRs, so that 'the public interest' can never override human rights unless it serves the GRs grounded in at least equally important GCAs.

David Townend appeals to the value and importance of politeness to describe how persons ought to regard others in relation to personal data interests. What he says about this is very interesting, and captures at least part of the idea that moral rights and duties describe the behaviour of those who treat others with equal concern and respect. He recognises that politeness is normally contrasted with rudeness, with behaviour that is boorish or uncultured, which puts it on a scale of worse to better behaviour, not on one of wrong versus right behaviour, and that so conceived (as a matter of etiquette), politeness does not and cannot capture fully the conduct imposed by a rights in relation to personal data. It must be understood as a matter of morality.

Such an understanding must view the relations and actions required by politeness as required by the PGC. While I consider the actual picture he paints to have considerable merit, there are dangers in some of the terminology he uses to relate it to the PGC. For example, he says that rights to things like food, health, education are 'negotiable'. Under the PGC, this is true in the sense that what they grant rights to can be overridden by some other competing

⁶² For analysis of which, see Beyleveld and Brownsword, *Consent in the Law* chapter 10 (n 34).

⁶³ In D Beyleveld, 'Conceptualising Privacy in Relation to Research Values' in SAM McLean (ed), *First Do No Harm* (London, Ashgate, 2006) 151 and 'Data Protection and Genetics: Medical Research and the Public Good' (2007) 18 *King's Law Journal* 275.

rights. But none of them are negotiable *as rights*, which is to say that the need for each provides a consideration to be assessed via the criterion of needfulness for agency that is inalienable even if its force is not always decisive. He also says that applications of the PGC yield subjective rights. This is true if he merely means that what instantiates the GCAs *in concreto* can rest on different agent-specific factors. It cannot mean that whether or not there is a right to a GCA rests on such factors. What is contingent (better than ‘subjective’) is not whether or not there is a right to a GCA, but what in practice is necessary to preserve a GCA of a particular agent.

It is also confusing to say that only the only primary right is to the ability to act, and that all other GCAs are secondary when ‘secondary’ rights are identified with ‘indirect’ ones, because all secondary rights are determined, in application, by the degree of needfulness for agency, whereas indirect ones are generated by delegated power to create rights not incompatible with the GRs.

Philosophical Reflections

Thom Brooks and Diane Sankey maintain that the problem with Gewirthian ethical rationalism is that it privileges reason over the emotions and sensibility, as a result of which it cannot give an adequate account of law and morality. They use the history and context of current sexual offences law to illustrate and justify their claims.⁶⁴

There are three overarching problems with their critique.

First, they do not correctly portray the criterion of rationality that the foundational Gewirthian argument employs, which is not that of logical consistency, nor that of instrumental rationality itself, but acceptance of the requirements of agential self-understanding (one of which is acceptance of the PHI) and what follows logically and conceptually from these. In Kant’s terms, agents act rationally when they act in accord with themselves, and in order to do this, they must render acting for themselves (acting on and in terms of the particular contingencies that differentiate them from other agents) consistent with acting from the universal viewpoint of all agents (with the idea that they are agents at all). They focus on agential self-understanding because only agents (those with the capacities and disposition to pursue means voluntarily to their chosen ends) are intelligible subjects and objects of practical discourse (normative or not). Now, to be an agent (so defined) requires the possession of many faculties or capabilities, which include those of understanding, conceptualisation, deliberation or judging, feeling (having emotions), sensing, desiring, inferring, imagining, and vulnerability in the sense of having ends that can be thwarted and need means to be secured for their pursuit and achievement. All agents, *to be agents*, have and must have these, whether they are human or not; and they cannot think of themselves as sensing anything, having any emotions, desires, and soon, if they do not have these.⁶⁵ Because agents require *all* these capabilities in at least some degree *to be agents*, it is false that they prioritise what Brooks and Sankey call ‘reason’ over the emotions in their account of agency and rationality.

⁶⁴ I comment on their contribution in this subsection because it is directed against the dialectically necessary method.

⁶⁵ These capabilities must be distinguished from GCAs, which are conditions that those with agency capabilities need generically in order to act/act successfully (which does not preclude some capabilities also being GCAs).

Secondly, they do not distinguish what must be appealed to in order to justify the PGC as the supreme principle of practical reasoning (not merely of morality) from what is required to apply the PGC to judge the rationality (the normative validity) of actions and institutions. *In arguing for the PGC*, agents may only accept what *is* dialectically necessary for them to accept; but *in acting* agents *may* accept anything *that does not conflict with* their dialectically necessary commitments. But this criterion for rational action rests on recognition that agents *can* (*as against may*) have all sorts of desires, feelings, and physical characteristics, and can inhabit various social contexts. Only on this supposition can agents be individuated and it make any sense to think that they may or ought do anything. Now, in arguing for the PGC, the argument necessarily abstracts from all these differences, because only in this way and at this level can a categorical imperative be justified. One of the basic GCAs is mental (which includes emotional) equilibrium, which can be disturbed or lost by grief, pain, rage, lack of self-esteem or self-confidence, and despair. In arguing for the PGC, Gewirthians do not attend to these because it is unnecessary and distracting to do so when the task is simply to show that it is dialectically necessary for all agents to respect the GCAs of all agents. But, because agents can and do differ in their biological makeup, sensitivities, and other contingent factors and circumstances, what will, for example, cause an agent grief so as to disturb the agent's emotional equilibrium can vary, and all of this contingency is and must be taken into account when applying the PGC to specific actions, rules, institutions.

Thirdly, they attribute an alien aim to Gewirthians; that of explaining and accounting for the history of positivistically viewed law and regulation. But while Gewirthians accept that understanding and explaining what has produced particular regimes of regulation is important (even necessary) to judge what can (or cannot), may (and may not) be done practicably to ameliorate or change these in line with the PGC's normative requirements, it is not the task of Gewirthian ethical rationalism itself to provide such understanding or explanation.

There are many other ways in which Brooks and Sankey mischaracterise the Gewirthian position, and I cannot delineate them all in detail here. I will mention only the following: (i) their summary of the argument for the PGC does not accurately portray the argument's modalities and their placement in it; (ii) nowhere have I said that pressure can never invalidate a consent; (iii) the Gewirthian view does not restrict autonomy to autonomy over one's body (it grants self-autonomy over one's possession of all the GCAs); (iv) hope-fear is not the only emotion that Gewirthians recognise, but it does have a special place in characterising the phenomenology of agency; (v) Gewirthians do not ascribe to Cartesian dualism or any other metaphysical thesis about the relationship between body and mind.⁶⁶

Michael Boylan argues that utilitarianism and contractualism are incapable of providing a basis for rights and duties, because rights and duties cannot be grounded in contingent preferences or choices. I agree with much of what he says, but I think it worthwhile to state the basis of the Gewirthian position on this. Simply put, it is that the PGC, in being the supreme principle of practical reason, institutes rights and duties by application of Gewirth's criterion of needfulness for action⁶⁷ in the circumstances in which it is to be applied. These rights and duties cannot be modified by the preferences and choices of

⁶⁶ The justification for points (iv) and (v) is given elsewhere. See Beyleveld, 'Hope and Belief' (n 3); and 'Gewirth and Kant on Kant's Maxim of Reason' (n 30); and Beyleveld and Ziche, 'Towards a Kantian Phenomenology of Hope' (n 30).

⁶⁷ Gewirth, *Reason and Morality* 343–49.

agents. There are, however, circumstances in which what the PGC requires is not clear, matters over which the PGC has nothing directly to say but requires choices to be made, and the PGC does permit agents to release others from their GR-correlated duties to them provided that this does not disproportionately interfere with the GCAs of yet others against their will. Furthermore, the PGC does permit agents to undertake duties to others that are not required by the PGC, provided that these duties govern only those who freely consent to them and do not act negatively on the GCAs of others who do not freely consent to them.

Dascha During and Marcus Düwell take up my contention that Gewirth's argument implies that human dignity resides in the capacity of human agents to hope and fear.⁶⁸ In a very penetrating paper they contribute significantly to the elucidation of Gewirthian philosophical anthropology by reflecting on the centrality of hope for Gewirthian theory within the aesthetic frame to which they rightly say it belongs.

Just one point of clarification. When I hope that X, I fear that not-X. In this sense, hope and fear are opposite sides of the same coin. But to be in a hopeful state is not also to be in a fearful state, at the extreme of which is to be in despair (to have lost hope), and it is the latter contrast that During and Düwell rightly concentrate on for the purposes of their analysis.

Stuart Toddington takes issue with the idea that the Gewirthian argument cannot show that Agnes must grant the GR to Brian because it is 'monological', and that such an ambition can only be achieved by a 'dialogical' argument, which many take Hegel's critique of Kant to demonstrate. He maintains that Hegel's own argument for morality can only succeed if it operates in the 'monological' manner employed by Gewirth and Kant. Indeed, he suggests that Hegel gets very close to arguing in just such a way.

I do not know enough about Hegel to pass judgment on this suggestion. However, it does not strike me as outrageous, given that the only sense in which the Gewirthian argument is 'monological' is that, in being conducted from Agnes' internal viewpoint as an agent, it follows Kant's maxim of understanding 'Think for oneself',⁶⁹ which is to say that Agnes should (indeed, may) only accept reasons for belief or action that provide *her* with reasons. As I have explained above, to say this is not to ascribe to Humean internalism; nor is it to operate in a solipsistic matrix divorced from any recognition of the existence of other agents. Agnes tries to answer the question 'What may I do?' and the criterion that the Gewirthian dialectically method imposes for answering it (driven by the PRJ) is that Agnes may only accept rules or principles that are consistent with what Agnes must accept by virtue of understanding what it is for her to be a member of the class of agents. In other words, in Kant's terms, the Gewirthian argument is driven by the claim that Agnes only thinks for herself when she thinks 'in accord with herself', which is to say, in a way that renders thinking for herself consistent with the universal viewpoint of agents as agents.⁷⁰ Consequently, the Gewirthian argument is 'dialogical' in the way in which it is 'monological', the 'dialogue' being between Agnes thought of as the particular unique agent that she is, and Agnes thought of as a member of the class of all agents (in which terms Agnes and Brian are united).

⁶⁸ See Beyleveld, 'Hope and Belief'; and Beyleveld and Ziche, 'Towards a Kantian Phenomenology of Hope' (n 30)

⁶⁹ I Kant, *Critique of the Power of Judgment* edited by P Guyer (Cambridge, Cambridge University Press, 2000) 174 (5:294 in the Academy edition).

⁷⁰ Ibid 174–75 (5:294–95).

Ken Westphal has made an assiduous and sympathetic attempt to understand the Gewirthian argument. As I understand his analysis, he considers that my arguments for dialectically necessary acceptance of the *PGC* render it dialectically necessary only because I impute inadequately justified moral force to dialectically necessary claims because adequate justification requires recognition of a GCA that I do not recognise (viz., that agents require the co-operation of other agents to become rational agents). Furthermore, he claims that this recognition enables moral principles to be justified assertorically, not merely dialectically.

Given space constraints, it is impossible for me to reply adequately to him, or to comment on every relevant aspect of his analysis. But I am not persuaded (a) that the argument relies on a moral imputation that I have not fully justified; nor (b) that the ‘GCA’ recognition he presses can justify moral imputation within the Gewirthian dialectically necessary matrix; nor (ii) that an appeal to rational nature being an end in itself can yield assertorically valid moral principles.

Re (a), my argument for dialectically necessary mutual recognition requires Agnes to recognise that $\{BRO^B\}_{\text{Brian}}$. Westphal seems to think that this concession involves a moral imputation in departing from the stricture that the dialectically necessary argument be conducted entirely first-person. If no moral imputation is involved, why (he asks) not elicit Agnes’ required commitment to BGR directly from her required commitment to AGR?⁷¹

But that is exactly what the argument using the ASA does. $\{AGR\}_{\text{Agnes}}$ entails (purely first-person) ‘Agnes is an agent’ entails ‘AGR’_{Agnes}, which logically requires Agnes to accept $\{BGR\}_{\text{Agnes}}$. No reference is made here to Brian’s dialectically necessary commitments.

However, my argument for dialectically necessary mutual recognition does employ such reference. The essence of it is as follows: $\{BGR\}_{\text{Brian}}$ follows logically from $\{AGR\}_{\text{Agnes}}$, therefore $\{\{BGR\}_{\text{Brian}}\}_{\text{Agnes}}$. However, for $\{AGR\}_{\text{Agnes}}$ to be true/intelligible, Brian must be able to accept AGR without this contradicting his dialectically necessary commitments, which is to say, without this conflicting with BGR.⁷² This is because it is unintelligible for Brian to accept an ‘ought’, or for Agnes to think that he might, if by this acceptance he implies that he is not an agent. This follows simply from the premise that it is only agents who can raise questions about what they ought to or may do and to whom norms can be directed intelligibly. But this means that it is dialectically necessary for Agnes to regulate her practical reasoning on the basis of BGR, which means that $\{AGR\}_{\text{Agnes}}$ entails $\{BGR\}_{\text{Agnes}}$.

Despite reference to $\{BGR\}_{\text{Brian}}$, this reasoning is entirely first person, because what constitutes being a first-person consideration in the Gewirthian foundational argument is anything and everything that is dialectically necessary for her Agnes to accept (and only what is dialectically necessary for her to accept), which includes whatever follows purely logically or analytically from what is dialectically necessary for her to accept.⁷³

Related to this, it is misleading for Westphal to say that in Stage II, $\{I \text{ shall defend my GCAs}\}_I \equiv \{I \text{ prudentially ought to defend my GCAs}\}_I$ (or, as I prefer, $\{ARO^A\}_A$) is imputed to be biconditionally related to $\{I \text{ (morally) ought to defend my GCAs}\}_I$. The operative

⁷¹ See his questions at fn 41 of his contribution to this volume.

⁷² It is not required that Brian actually accept AGR, nor that AGR be acceptable to Brian in terms of any contingent view on normativity he ascribes to.

⁷³ This, I hope, answers Westphal’s second question at fn 41.

biconditional relationship I assert is between ‘Agnes is a ta’ and ‘Agnes is a Ta’ (per the PRJ) within Agnes’ dialectically necessary matrix. In consequence of this, I maintain that it follows logically that $\{ARO^A\}_A$ is biconditionally related to $\{Agnes\ ought\ (by\ virtue\ of\ being\ a\ Ta)\ to\ defend\ her\ GCAs\ from\ interference\ against\ her\ will\}\}_{Agnes}$ (which is biconditionally related to $\{Agnes\ ought\ (because\ Brian\ is\ a\ Ta)\ to\ defend\ Brian's\ GCAs\ from\ interference\ against\ his\ will\}\}_{Agnes}$. *In consequence of this*, to say that Agnes *morally ought* to defend her GCAs from interference against her will is that *it is dialectically necessary for her to accept* that she prudentially (categorically instrumentally) ought to defend her GCAs. This is not simply imputed, it is argued for via the ASA/the argument for dialectically necessary mutual recognition that constitutes Stage III in the three stage presentation of the argument.

For all Westphal’s engagement, I suspect that he does not see clearly that Agnes’ categorical instrumental need for the GCAs plays no part in the collective universalisation, which is effected solely by the PRJ operating within Agnes’ dialectically necessary matrix.⁷⁴ In consequence, he mistakenly presents the Gewirthian ‘dialectically necessary’ argument, in the final analysis, as a dialectically contingent argument from moral imputation, not as what it is—a dialectically necessary argument from *pure* agential self-understanding.

Re (b)(i), I do not recognise conditions necessary to become an agent as GCAs, because GCAs are generically instrumental conditions required by agents to pursue/achieve their purposes. A GCA is something that necessarily contributes to Agnes, *who is already an agent*, being able to act/act successfully. So, I do not see how recognising the existence of conditions for becoming an agent can figure within the Gewirthian dialectically necessary argument rather than outside of it.

Westphal might respond that the proper focus is on becoming an *effective rational* agent (one who possesses sound understanding), not on becoming an agent per se. If so, then he might reason as follows: Rational nature is an end in itself, meaning that to act in accord with a categorical imperative is an end in itself. However, Agnes’ appreciation of her dialectically necessary commitments is best achieved together with others (because Agnes develops the capacities for agential self-understanding from/with others⁷⁵ and her use of these capacities is better when checked by others in relations of equal concern and respect). Therefore, Agnes ought to respect Brian’s agency needs equally with her own.

If this is what he has in mind, then why does this not merely require Agnes to treat with moral concern and respect only those agents who treat her with equal concern and respect?

Re b(ii), since the only sense in which I accept that rational nature is an end in itself is that it is an end in itself for Agnes to act in accord with her dialectically necessary commitments, I do not see how an argument from the fact that we can only become agents who act in accord with reason together, can render the derivation of a moral ‘ought’ non-dialectical. So, I do not see how, without debating realism/idealism, it is possible to defend a nondialectical naturalism, which Westphal says his Natural Law Constructivism is (the Gewirthian position being a dialectical naturalism, in maintaining, via the ASA, that it is dialectically necessary for Agnes to hold being an agent to be the *ratio essendi* for having the

⁷⁴ For this reason, I agree that Kant does not need to refer to the GCAs to justify a moral imperative. But I do think that such an imperative is underspecified without attention to the GCAs.

⁷⁵ Which she surely must already possess in at least some rudimentary form in order to be able to learn from and with others.

GR). So, might it not be the case that the considerations that Westphal appeals to have their proper place in working out the conditions for correct application of the PGC, rather than in the task of supplying the justification for moral imputation?

I look forward to being enlightened on all these queries and reactions.

Finally

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